PART IV

Section 1—C

GENERAL STATUTORY RULES AND STATUTORY ORDERS ISSUED BY THE CENTRAL GOVERNMENT AND ORDERS MADE BY THE PRESIDENT AND REPUBLISHED BY THE STATE GOVERNMENT.

ELECTION COMMISSION, INDIA.

NEW DELHI,
Dated the 18th September, 1967.

NOTIFICATION.

No. 82/MY/21/67.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 1st August, 1967 by the High Court of Mysore at Bangalore in Election Petition No. 21 of 1967.

IN THE HIGH COURT OF MYSORE AT BANGALORE

Dated the 1st day of August 1967

Before the Hon'ble Mr. Justice K. R. Gopivallabha Iyengar

Election Petition No. 21/1967.

Sri H. R. Annamalai Mudaliar son of Sri Rajagopala Mudaliar, aged about 48 years, President, Town Municipal Council, Hunsur, residing at Store Street, Hunsur, Mysore State ...*Petitioner.*

(By Sri B. T. Parthasarathy)

Vs.

Sri Devaraje Urs, son of Devaraj Urs, aged about 50 years, Hon'ble Minister for Fisheries, Animal Husbandry and Information, Government of Mysore, Vidhana Soudha, Bangalore

residing at Sankey Road, High Grounds, Bangalore-1 .... *Respondent*

(By Sri M. P. Chandrakantaraj Urs)

Election Petition filed by the Petitioner under Section 80 and 81 of the Representation of the People Act, 1951 challenging the election of the Respondent to the Mysore Legislative Assembly from Hunsur Constituency in the General Election held in February 1967 and seeking an order that (1) The rejection of the petitioner's nominated paper for contesting the Mysore Legislative Assembly seat and that the acceptance of the nomination paper of the Respondent is irregular, illegal and improper and the election of the Respondent to the Mysore Legislative Assembly for Hunsur Assemblies Constituency be declared to be void and other consequential reliefs may be awarded.

This election Petition coming on for trial on 21st, 24th 25th and 26th days of July 1967 in the presence of Sri B.T. Parthasarathy, Advocate for the Petitioner and Shri M. P. Chandra Kantaraj Urs, Advocate for Respondent and Petitioner No. Respondent No. and this Election Petition having stood over for consideration, the Court made the following order this 1st day of August 1967.

ORDER.

Gopivallabha Iyengar, J.—

This Election Petition relates to the election of a Member to the Mysore Legislative Assembly from the Hunsur Assembly Constituency, in the elections held on 15th February 1967. The respondent was declared duly elected by the Returning Officer on 21st February 1967.

The Petitioner and the respondent amongst others filed their nomination papers before the Returning Officer, in response to the Notification in the Official Gazette of Mysore dated 13th January 1967 calling for nominations. The nomination papers were scrutinised on 21st January

1967. The respondent raised objections to the nomination of the petitioner contending that the petitioner held subsisting contracts with the Public Works Department of the Government of Mysore, in the course of his business as a licenced Public Works Department Contractor, and therefore was disqualified to stand for Elections to the Mysore Legislative Assembly. The Returning Officer, after giving an opportunity to the parties to adduce evidence in support of their respective contentions, rejected the nomination paper of the petitioner on 22nd January 1967, under the provisions of Section 36 (2) (a) of the Representation of the People Act, 1951 (hereinafter referred to as the Act), holding that on the date fixed for the scrutiny of the petitioner's nomination paper, the petitioner's contracts with the Government of Mysore subsist and he is therefore disqualified. The petitioner challenges this order of the Returning Officer as being erroneous inasmuch as on facts there was actually no subsisting contracts on the date of the scrutiny of the nomination papers.

In the Petition, the petitioner alleges that his contractual relationship with the Government as a contractor for the execution of the works undertaken by him had ceased to exist on the date of scrutiny. The petitioner submits that he had entered into agreements with the Executive Engineer (K. R. Nagar Division, K. R. Nagar) of the Public Works Department of the Government of Mysore in 1961 for the construction of the Pravasi Mandir at Hunsur, the Government Girls' Urdu Middle School at Hunsur and Hostel and School Buildings at Hakki Pikki Colony in Hunsur Taluk. It is alleged that the condition in the contracts was that the constructions of the abovesaid buildings should be completed and handed over before 1962. It is submitted that due to the non-co-operation of the Public Works Department, the Petitioner could not execute the works in time and the petitioner was treated as a defaulter and his contracts in respect of the works at Hakki Pikki Colony were cancelled, and final measurements were also recorded and final bill prepared in February 1962 in respect of those works. It is further stated that the contract was

renewed by the Superintending Engineer, Mysore Circle, on the petitioner's expressing his willingness to fulfil the contracts if the Department were willing to co-operate fully with him. Thereafter, the petitioner took up the construction works again. He further alleges that the authorities of the Public Works Department did not extend any help and co-operation to him in the execution of the works and he was prevented from showing any progress in the works. He wrote a letter on 8th July 1963 to the Executive Engineer, informing him that it was impossible for him to carry out further works and requesting him to pass orders for final bills being prepared in respect of the works already done and to arrange for the execution of the remaining works through other agencies. The Executive Engineer sent a reply dated 10th September 1963 asking the petitioner to contact the Assistant Engineer, No. 2 Sub-Division, Hunsur, to get the final claims on all the buildings settled. It is averred that in pursuance of this reply, the Assistant Engineer took steps to have final measurements. From the conduct of the parties above mentioned, the petitioner contends that the contractual relationship between him and the Public Works Department came to be terminated in 1963 itself. It is also incidentally mentioned that the petitioner has not renewed his license as a Contractor from 1964-65. The petitioner also refers in his petition that notwithstanding the cessation of the contractual relationship between him and the Public Works Department, the authorities have been issuing notices to him stating that the contracts were still subsisting and that he would be held liable to his obligations under the contracts. A further allegation is made that the respondent who held office of a Minister prior to the 1967 Elections, was very influential and had prevailed upon the Public Works Department authorities to take the stand that they had taken in order to create evidence and bolster up the objections raised by him to the acceptance of the petitioner's nomination paper.

On these allegations, the petitioner has filed the above Election Petition under Sections 80 and 81 of the Act, praying that the order of the Returning Officer, rejecting

the petitioner's nomination paper for election as a member of the Mysore Legislative Assembly from the Hunsur Constituency at the 1967 General Elections be held to be irregular, illegal and improper and to declare that the election of the respondent to the Mysore Legislative Assembly from the Hunsur Assembly Constituency is void

It is to be further mentioned that in the petition a ground is also raised disputing the qualification of the respondent to stand as a candidate for the Elections to the Mysore Legislative Assembly. It is alleged that at the time of filing his nomination paper, the respondent was the Chairman of the Mysore State Road Transport Corporation, Bangalore, (which is a statutory body) and this is an office of profit as contemplated under the law. For this reason it is stated that the respondent has incurred a disqualification for contesting the Elections under Article 191(1) (a) of the Constitution and therefore the acceptance of his nomination a per is invalid and renders his election to the Assembly void. During the course of arguments an attempt was made to rely on the provisions of Section 10 of the Act, under which a person who is a managing agent, manager or secretary of any Corporation in the capital of which the Government has not less than twenty-five per cent share is disqualified. The ground in this case is that the capital of the Corporation of which the respondent is the Chairman is entirely of the State.

The respondent denied the allegations of the petitioner and re-iterated that the contractual relationship between the petitioner and the Government subsists. The respondent states that the contention of the petitioner that there was a cessation of all contractual relationship between the petitioner and the Public Works Department is not true. It is alleged that though it was open to the petitioner to have taken proper and adequate steps to legally terminate the contracts, he failed to do so and the final accounts between the parties have not been settled. The respondent also denied the allegation that he was in any way responsible

for the various notices issued by the Public Works Department to the petitioner in respect of his contracts as alleged by him. In view of the fact that according to the respondent the contractual relationship between the petitioner and the Public Works Department of the Government of Mysore subsists, it is alleged that the order of the Returning Officer is in accordance with law and the facts pertaining to the case. The respondent has also denied that the Office he held as Chairman of the Mysore State Road Transport Corporation prior to 20th January 1967 is an office of profit and in any event he states that he having resigned from that office and his resignation having been accepted by the Government of Mysore on 20th January 1967, the order of the Returning Officer accepting his nomination paper is in accordance with law. The respondent, therefore, contends that the petitioner's application challenging the Election is liable to be dismissed with costs.

On the basis of these pleadings, the following 4 issues were framed—

Issues :—

1. Does the petitioner prove that the contractual relationship between him and the Government was not subsisting on 21st January 1967, and that it had come to an end as early as in 1963 and therefore he was not disqualified to stand for election under Section 9A of the Representation of People Act of 1951? If so, is the election of the respondent to be declared void under section 100 (1)(c) of the Representation of People Act of 1951 on the ground that the nomination of the petitioner has been improperly rejected?

2. Does the petitioner prove that at the time fixed for the scrutiny of the nomination papers the respondent was the Chairman of the Mysore State Road Transport Corporation, Bangalore, a statutory body and was holding an office of the profit under the Government of Mysore and therefore was disqualified to be chosen as a member of the Mysore Legislative Assembly, under Art. 191 (1) (a) of the Constitution?

3. Does the respondent prove that he had submitted his resignation on 19th January 1967 and that the same was accepted by the Government of Mysore as per Notification dated 20th January 1967 and therefore on the date of scrutiny the respondent had ceased to be the Chairman of the Mysore Road Transport Corporation and that he was not disqualified under Art. 191 (1) (a) of the Constitution ?

4. To what relief is the petitioner entitled ?

At the outset I shall record the submission of Sri B. T. Parthasarathy, the learned counsel for the petitioner, that he does not press the second issue and confines his arguments to the first issue only. In view of this stand taken by the learned counsel for the petitioner, the question as to whether the respondent was disqualified to be chosen as a member of the Mysore Legislative Assembly under Art. 191 (1) (a) of the Constitution or Section 10 of the Act does not arise for consideration.

Consequently, the third issue also does not require to be considered.

Therefore both the petitioner's counsel Sri B. T. Parthasarathy and the respondent's counsel Sri M. P. Chandrakanthraj Urs have confined their arguments bearing only on the first issue.

The petitioner examined himself and the respondent examined himself and one witness.

The contention of Sri B. T. Parthasarathy is, that on the date of scrutiny of the nomination papers there was no subsisting contract between the petitioner and the Government of the State of Mysore. The contracts referred to in Exhibit P-2, the order of the Returning Officer, dated 22nd January 67 are three in number. They are evidenced by Exhibits R-1, R-2 and R-3 dated 23rd January 1961. Exhibit R-1 relates to the construction of a School Building in Hakki Pikki Colony at Nallurpala in Hunsur Taluk. The work was to be completed on or before the 14th day of August, 1961. Exhibit R-2 relates the construction of a Hostel Building at Hakki Pikki Colony above mentioned,

and the work was to be completed on or before the 14th day of October 1961. The third agreement under Exhibit R-3 was for construction of a Urdu Girls' Middle School at Hunsur and the work was to be completed by 30th September 1961. All the three contracts have been entered into on the same date but the dates of completion vary. As the construction works were not completed before the dates mentioned in the agreements, the agreements were admittedly renewed and the time for completion extended. In support of the contention that by September 1963, the contractual relationship between the petitioner and the Public Works Department came to an end, the petitioner relies upon Exhibits P-1 and P-4 as also the subsequent conduct of the parties in relation to the contracts in question. Exhibit P-1 is a letter dated 8th July 1963 addressed by the petitioner to the Executive Engineer. This letter purports to be a reply to a letter of the Executive Engineer dated 27th June 1963. That letter is not placed before court. The petitioner complains in Exhibit P-1 that he has not received the estimate and plan regarding Hakki Pikki Colony buildings, though he had been requesting for them since a long time. He also refers to the details of the work done by him and to the fact that he had written several letters to which no replies were issued. He complains that there has been no co-operation on the part of the Department and that his bills have been pending payment from a long time. He also records several complaints. Regarding Hakki Pikki Colony work he states that he has done the work as per instructions of the Supervisor but wrong measurements have been recorded. He wants the measurements to be re-checked. In respect of the Hostel Building, he states that he asked for permission to put up concrete but that he has not received any reply. He enumarates the several pending bills and ultimately he concludes by stating as follows :—

> "In the circumstances, I shall feel obliged if you will kindly pass orders for final bills being made in every case, and amounts paid for the works done. Further works may kindly be got executed

through other agencies. On payment of my amounts, I will take back the materials collected at sites of work. I may kindly not be misunderstood for writing this ".

Exhibit P–4 dated 7th September 1963 is a reply to the above letter. In that letter the Executive Engineer refers to the construction of the Hostel and School Buildings at Hakki Pikki Colony in Hunsur Taluk and the construction of other buildings at Hunsur. He requests the petitioner to contact the Assistant Engineer, No. 2 Sub Division, Hunsur, and get the final claims on all buildings. A note is found in Exhibit P–4 stating that a copy of this communication is sent to the Assistant Engineer concerned, to see that the claims are finalised immediately. It should also be noted that Exhibits R-14, R-15 and R-16 are issued to the petitioner by the Assistant Engineer proposing to take final measurements. Ext. R-14 is dated 16th September 1963 wherein a reference is made to the Hostel and School Buildings at Hakki Pikki Colony and also the other buildings at Hunsur. In Ext. R-14, the Assistant Engineer requires the petitioner to be present for taking final measurements of the above works on 20th September 1963. As no measurements were taken on that date. A further letter is addressed to the petitioner as per Exhibit R-15, dated 2nd June 1965. In this reference is made to the construction of the Hostel Building and the School Building at Nallur Pala. The petitioner is requested to be present at Hakki Pikki-Colony to take final measurements of the above building on 8th June 1965. Similarly Exhibit R–16 is again issued on 10th June 1966, informing the petitioner that the date fixed for taking final measurements is postponed to 11th June 1966 at 9 A. M. On the basis of these documents and in particular Exhibits P–1 and P–4, it is argued that there was nothing more to be done by the petitioner in pursuance of the contracts which he had entered into under Exhibits R-1, R-2 and R-3. The contention of Sri Parthasarathy, is that by virtue of Exhibit P–1, there is a clear, unconditional and absolute repudiation of the contract and that the same has been

accepted by the Public Works Department through the Executive Engineer. He further submits that the petitioner having refused to perform his promise in entirety and it being open to the Public Works Department to put an end to the contract and they having done so in Ext. P-4, the only way in which the contractual relationship can once again come into existence is by the parties entering into a fresh contract; and that not being the stand of the Public Works Department, it must be held that the contract has come to an end in September 1963 itself. Reliance is placed on the—provisions of Section 39 of the Indian Contract Act in support of his contention.

To appreciate the above argument of the learned counsel for the petitioner, it is necessary to determine the significance of the two letters Exhibits P-1 and P-4 and Exhibits R-14, R-15 and R-16 also. This can be done by taking into consideration the subsequent conduct of the parties as evidenced by the correspondence between them, *viz.*, the petitioner and the Public Works Department. Sri Parthasarathy stated that Exhibits R-14, R-15 and R-16 indicates merely steps in implementation of what has been stated in Exhibit P-4. It does not appear to be quite correct to state so. In Exhibit P-4 the petitioner is requested to contact the Assistant Engineer to get the final claims on all the buildings, while Exhibits R-14, R-15 and R-16 refer to the final measurements to be taken. In this connection, it must be noticed that under the terms of the contract a bill is to be prepared by the Sub-Division Officer or the Executive Engineer at least once every month for all work executed in accordance with the terms of the specification, after taking the requisite measures for having the same tested, and the claim, as far as admissible, adjusted, if possible. In order to do this, it is necessary to take periodical measurements. Therefore, merely taking of measurements as directed in Exhibits R-14, R-15 and R16, does not take the matter further. So, Exhibits P-1 and P-4 must be taken as they stand. We must refer to other documents to find out what exactly the parties meant from these two documents. Exhibit R-23 dated 9th December

1963 is addressed to the Executive Engineer by the petitioner. In that letter, he requests the Executive Engineer to grant an interview so that he could lay his difficulties before him. Referring to the Hakki Pikki Colony work, he states that the work had been re-tendered with the object of giving it to somebody else but later on the contract was renewed. He also states that then the final bill had been prepared. Obviously this refers to the bill prepared when the Public Works Department had decided on re-tendering the work owing to the default on the part of the petitioner and before the contract was renewed. In this letter, also the petitioner states that the work may be entrusted to someone else. There is reference in this letter to the New Travellers' Bungalow at Hunsur and the petitioner complaints that he has not been given cement and iron for the remaining work. Similar complaint is made in respect of the Urdu Girls' School at Hunsur. He makes a reference to the pending Bills. What is significant in this letter is firstly the absence of the pending bills in respect of the three contracts under Exhibits R-1, R-2 and R-3 and secondly that the petitioner seeks facilities to be given to him for the quick execution of the works on hand. In Exhibit P-1 he made a general representation stating that further works may be kindly got executed through other agencies. It does not refer to the contracts under Exhibits R-1, R-2 and R-3 only. Exhibit R-23 gives an indication that the petitioner did not intend to snap the contractual relationship between him and the Public Works Department. In Exhibit R-32, letter addressed by him to the Superintending Engineer, Mysore Circle, Mysore, he repeats that the work may be entrusted to someone else. Same Complaints as in Exhibit R-23 are incorporated in it also. He complaints that the Department was not paying attention to his several representations and that therefore he was addressing this letter to the Superintending Engineer with a request that he may take suitable action for payments being made to the petitioner for all the works mentioned in the said letter and for facilities being given to him for the quick execution of the works on hand. There is no reference in these two letters

to the fact that he is not interested in the further execution of the works. It would be normally expected that if really he had intended to put an end to the contractual relationship by virtue of Exhibit P-1, these letters, Exhibits R-23 and R-32 would not have made any reference for facilities being given to him for the quick execution of the works on hand. The omission in the said letters to the petitioner's claim in regard to the works executed by him under Exhibits R-1, R-2 and R-3 is also indicative of the fact that the petitioner did not consider the contracts as not being in force. These letters further indicate that there were works on hand which he intended to execute. In Exhibits R-29 and R-30, dated 2nd March 1964 addressed respectively to the Superintending Engineer, Mysore Circle, and the Chief Engineer to the Government of Mysore, the petitioner makes reference to the current works and states that cement and iron have not been given to him and it is on account of the Department's delay that the works are held up. He also makes a request that he may kindly be paid for those works at the current schedule rates plus 5 per cent since the cost of materials and labour charges have risen to a very high level. In Exhibit R-30 he makes reference in particular to the work of of the Travellers' Bungalow at Hunsur and the Urdu Girls' School at Hunsur and complains that cement and iron have not been given to him from a long time. He also complains in Exhibit R-30 about the non-payment of bills. It is significant to note that in Exhibit R-30 he states that for the current works bills may kindly be ordered to be made in respect of the works done and for supply of materials. He also seeks an interview with the Chief Engineer. These two letters do not seem to be consistent with the stand taken by him that the contractual relationship between the parties had ceased to exist in September 1963.

Another letter that is significant for the purpose is Exhibit R-28 dated 29th October 1964. In that letter the petitioner refers to an interview with the Executive Engineer and states that owing to non-payment of bills and lack of co-operation from the Department, the stoppage of

pending works has resulted. The works referred to are (1) the New Travellers' Bungalow, (2) Colony School and (3) Hostel Buildings. He also states in that letter that he was told that final bill was made and the work could be entrusted to some other agency. No reference is made in this letter to the work under all the contracts Exhibits R-1, R-2 and R-3. In the same letter the petitioner refers to certain assurances given to him by the Engineer and states that on the basis of those assurances, he is aggreable to take up the pending works and see that they are completed at the earliest. A reference is made in Exhibit R-23 to the roofing of Hakki Pikki Colony work and the petitioner states that as Honne Wood is not easily available in the market, he may be permitted to use Nandi wood for roofiing only. He further states that as far as the doors and windowsas were concerned, he has got the materials ready as per specifications of the Department. He further states that he has lost heavily on account of departmental delays and non-payment of amounts, but that he agrees to carry out the works in view of the assurances. These letters indicate that the petitioner never intended in Exhibit P-1 to put an end to the contracts. It must be noted that though in Exhibit R-29 the petitioner made a request for higher rates no reference is made to it in Exhibit R-28. Obviously the authorities wanted the petitioner to stick up to the terms under Exhibits R-1, R-2 and R-3 and extended the time for completing the works. In his evidence the petitioner also states that generally contracts are not completed in time and extension of time is granted. And that is what has happened in his case also.

The next letter is Exhibit R-17 dated 21st May 1965. This is a letter addressed by the Assistant Engineere, Hunsur, to the contractor in which the Assistant Engineer, requests the contractor to complete the works early without giving room for resorting to other measures by him Exhibit R-4 is a letter dated 17th August 1965, wherein the Executive Engineer of complains of non-resumption and slow progres of works entrusted to the contractor. A refernce is made to the Hakki Pikki Colony School and

Hostel Buildings and the New Travellers' Bungalow at Hunsur. It is complained that the petitioner has not resumed the work held up since 1962 and the contractor was informed that his contract would stand cancelled ten days after the receipt of the letter. He has also been notified that he would be responsible to indemniby the Government for all the losses the Government would be put to on account of the cancellation of the contracts, which may ensue. From this letter the petitiner wants the court to infer that no work was done by him since 1962 and this is consistent with the termination of the contract under Exhibit P-1 and the acceptance of the same by the public Works Depertment authorities under Exhibit P-4. Though the respondent disputed the fact that any further work was done by the petitioner since September 1962, it appears to me that this fact does not in the circumstances of the case aid the determination of the question whether the contract subsists or not.

Next I refer to Exhibit R-27 which is a reply dated 23rd August 1965 to Exhibit R-4. The petitioner explains that he has been doing the work on the assurance that the bills would be promptly paid and that his previous claims would be also settled soon. With refernce to Hakki Pikki Colony work, he complains that the plans and estimates have not been given to him and he refers to the representation made by him that it was not possible to do the work at the old rates. Regarding the Urdu Girls' School, which is covered by the contract under Exhibit R-3, he says:—

> "The plan and estimate have not been given to me till now. The type of roofing to be put has not been intimated. Even now, the work will be completed as soon as plan and estimates are given, and instructions issued regarding roofing."

He further states in the last paragraph of Exhibit R-27, which is marked as Exhibit R-27 (a) as follows:—

> "I would like to state here that without paying my bills for work done, and in the face of non-issue of instructions and materials from time to time you cannot terminate the contracts."

This statement is with reference to the statement of the Executive Engineer that the contracts would stand terminated ten days after the receipt of Exhibit R-4. The respondent's counsel very strongly urged that this statement, which is marked as Exhibit R-27 (A), is cleary against the contention that there has been any termination of the contract on the part of the petitioner by abandonment, which has been accepted by the Public works Department. The documents that I have referred to above indicate the subsistance of the contractual relationship between the petitioner and the Public Works Department even on 23rd August 1965, the date of Exhibit 27.

The learned counsel for the petitiner contended that the correspondence emanating from the petitioner and addressed to the authorities of the Public Works Department subsequent to September 1963, merely indicate offers on his part to enter into a fresh contract on revised terms. It is not possible to accept this contention, in view of the categorical statement in Exhibit R-27 by the petitioner as per Exhibit R-27 (a) that the Public Works Department cannot terminate the contracts. The question of terminating the contract would arise only when the contract is subsisting. If really the contract was not subsisting, the petitioner would have definitely stated that the contract had already been terminated and the only course left to the Public Works Department was to enter into a fresh contract on revised terms. In no letter of the petitioner there is a refernce to a fresh contract to be entered into on revised terms. On the other hand the consistent conduct on the part of the Public Works Department authorities has been to treat the contract as subsisting. In this connection a reference is invited by the respondent's learned counsel to Exhibits R-5, R-6 and R-13. They bear the same date 29th April 1966 and relate separately to the three contracts under Exhibits R-1, R-2 and R-3. They are identical in terms. In those letters the petitioner is warned that the penal clause will have to be enforced. In reply to these letters the petitioner sent replies which are marked as Exhibits R-24, R-25 and R-26, all dated

16th May 1966. It is pointed out that in them the petitioner does not refer to the repudiation of the contract or to the fact that the contractual relationship has come to an end. On the other hand he complains that the plan and estimate have not been given to him so far and the works have been done as per oral instructions of the Supervisor. He further complains that his bills have been pending from a long time unpaid. He pleads inability to work at the old rates. He further states that the type of roofing has not been intimated to him in spite of several letters and that he is not responsible for the delay. If the case of the petitioner that there was no subsisting contract is true, he would not have sent replies in terms evidenced by Exhibits R-24, R-25 and R-26. The contention of the petitioner in this connection is that, even though it may be that in some of the letters referred to above he has expressed a desire to complete the works, it does not in any manner affect the repudiation of the contract under Exhibit P-1, and the acceptance of it in Exhibit P-4. It is difficult to accept this contention. If, as contended by the petitioner, Exhibit P-4 should be understood as an acceptance of the repudiation of the contract by the petitioner, the conduct of the petitioner in not insisting on the taking of final measurements and the settling of his final bills is inexplicable. It is clear that until 10th June 1966 final measurements have not been taken. At this point I may refer to the allegation made in the petition, *viz.*, that the respondent who held a high office and was very influential had prevailed upon the Public Works Department authorities to take an unreasonable stand towards the petitioner in order to create evidence and bolster up his untenable objections against the acceptance of the nomination paper. There is not even a suggestion made to the respondent while he was in the witness-box pertaining to this allegation. This lends support to the conclusion that the allegation is made without due care and is baseless. It is also difficult to accept the above allegation in the petition in view of the fact that the Public Works Department's correspondence with the petitioner spreads over a long period starting from December 1963. It cannot be said that the respondent was

responsible for the several letters that the Public Works Department authorities have written to the petitioner. The petitioner in his cross-examination states that it is in 1966 that he decided to stand as a candidate for election, during the 1967 Mysore Legislative Assembly Elections. Therefore, it is impossible that the respondent could ever have thought that the petitioner would be his rival at the 1967 Elections and he could have caused the several letters to be addressed by the Public Works Department authorities to the petitioner.

The other documents that have been referred to relate to the letters addressed by the Public Works Department authorities subsequent to the date of the elections. Under Exhibits R-7, R-9 and R-11 all dated 25th February 1967, the Executive Engineer has sent communications to the petitioner with reference to the three agreements Exhibits R-1 R-2 and R-3, in which he complains that the petitioner has failed to complete the work in a satisfactory and workmanlike manner as per agreement and he has been informed that he cannot be absolved of his responsibilities and obligations in terms of the agreement. He has been told that there will be no other alternative than to enforce clauses 16 and 17 of the agreement. A copy of Exhibit R-7 has been submitted to the Superintending Engineer, Mysore Circle, Mysore, for information and another copy of the same has been sent to the Assistant Engineer, No. 2 Sub-Division, Hunsur, with a request to prepare the final bill in favour of the petitioner for the work done, after giving a clear notice of 10 days as per clause 20 of the agreement and also to take other requisite steps. Exhibits R-8, R-10 and R-12 are further communications dated 1st May 1967. These purport to be replies to the petitioner's letters dated 5th March 1967, marked as Exhibits R-21 and R-22. In Exhibit R-21 the petitioner acknowledges the receipt of the letter dated 25th February 1967 and while reiterating that he is unable to do the works, he requests that final bills be made in respect of the works. He expresses surprise at the notice sent to him complaining that his previous representations have been ignored. He also states that the works may be got finished by some other agency and that his final claims in respect of the three works may be paid. What is pointed out as

significant in these letters is, the petitioner's statement which is in these terms:

> "I therefore request you to arrange to pay my final claims in regard to these works, before entrusting to any other agency."

He also protests that the penal clauses in the agreement cannot be enforced against him. In view of the above statements in Exhibit R-21, the learned counsel for the respondent argues that even if it should be taken that there was a repudiation of the contract by the petitioner, it was not unconditional or absolute. The learned counsel for the petitioner, does not contend that if the repudiation is conditional it can amount to a repudiation in law. There must be a clear intention to abandon and refuse, to perform the contract. The case of the petitioner as already mentioned is that there has been a total, clear, unequivocal and absolute repudiation of the contract and the same has been accepted by the Public Works Department authorities. As rightly submitted by him, the contract would come to an end by the acceptance of the repudiation by the party who would be aggrieved by such repudiation. In the circumstances of this case the contention of the respondent with reference to Exhibit R-21 is well founded and gains support from Exhibit P-1 also in which the petitioner states that he would take back the materials collected at sites of work only on payment of amounts. The repudiation if any was not absolute, clear or unconditional.

The next set of documents which have been put in evidence are Exhibits R-18, R-19, and R-20, dated 14th July 1967 in which the Executive Engineer issues final notices to the petitioner under Clause 17 of the Schedule Contract annulling the contracts and informing him of the consequences of such annulment. Though the letters referred to above emanate from the Executive Engineer subsequent to the date of Election, it cannot be gainsaid that they indicate the subsistence of the contracts on the date of scrutiny of the nomination papers. From the correspondence referred to above and the conduct of the parties borne out by such correspondence, it is established that the contractual relationship between the petitioner and the Govern-

ment under Exhibits R-1, R-2 and R-3 was subsisting on 21st January 1967 and that it had not come to an end as early as in 1963 itself as pleaded by the petitioner. This finding would be enough to conclude that the Returning Officer was correct in rejecting the nomination paper of the petitioner for the reason that the petitioner was disqualified to stand for election by virtue of the provisions of Section 9A of the Act.

Assuming that Exhibits P-1 and P-4 constitute a repudiation of the contracts by the petitioner on the one part and the acceptance of the same by the public works Department authorities on the other, resulting in the termination of the contracts as urged by the petitioner's counsel, the learned counsel for the respondent contends that by virtue of the determination of the contracts, the contracts themselves do not cease to subsist. According to the respondent's counsel, a contract subsists until the rights and obligations of the contracting parties are finally settled with reference to the terms of the contract. In support of his contention, the respondent's counsel relies very strongly on the observations of the Supreme Court in A. I. R. 1954, S. C. Page 236, (CHATTURBHUJ VITHALADAS *V.* MORESHWAR PARASHRAM), while on the other hand, the petitioner's counsel has tried to distinguish the aforsaid decision and places reliance on the decision of the Madhya Pradesh High Court in A. I. R. 1959 Madh. Pra. page 39 (GAURI SHANKER *V.* MAYADHARDAS). In 1954 S. C. 236, the facts were that the appellant before them had entered into a contract with the Central Government for the supply of 'bidis' for sale to its troops through its canteens. It is found from the judgment that the contractor had fully executed his part of the contract and what remained to by done was payment by the Government. The question that arose before the Supreme Court was whether the contract for the supply of goods terminates when the goods are supplied or it continues in being till the payment is made and the contract is fully discharged by performance on both sides. The opinion of the Supreme Court was that it continues in being till it is fully discharged by performance on both sides. The Madhya Pradesh High Court while referring to the facts of the case in the Supreme Court decision states that

the facts of the case before them were entirely different. Therefore, the observations made by the Madhya Pradesh High Court must be taken in the context of the facts of that particular case. The general principles which guide the consideration of the question whether the contract subsists or not, are laid down in the Supreme Court decision. Before referring to them, I may point out that in the Madhya Pradesh decision, their Lordships refer with approval to the observations of the House of Lords holding that when a contract is at an end by the acceptance of the breach the contract survived for the working out of ancillary matters like the one for determination of the quantum of damages for breach or the the enforcement of the arbitration clause, if any. with reference to the above observations of the House of Lords, their Lordships of the Madhya Pradesh High Court observe:

> "According to them, the repudiation of a contract by one of the parties gives an option to the other, either to hold the party in breach to the contract and ask for its performance or to rescind the contract altogether. If the option is exercised to rescind the contract, the contract is at an end in so far as its performance by one or the other or both is concerned. The contract, however, survives for any incidental or ancillary purpose because the determination of the quantum of damages for breach or the "the enforcement of the arbitration clause, if any, depends upon the terms in the agreement, and it may be looked into for the limited purpose."

From this it follows that even after determination of the contract ,the contract survives for incidental or ancillary purposes. Referring to the facts of the case before them, the Madhya Pradesh High Court held that the case before them was one in which both sides elected not to proceed with the performance and to terminate the contract and treat it as rescinded. Therefore, in the case before them, there was nothing more to be done in pursuance of the contract. In fact there Lordships further observe:

> "Payment of price is a different matter and claim for damages is quite another. We do not conside-

it necessary to examine "examine cases of frustration, novation, etc., because those cases must be pronounced upon when they arise."

Sri B. T. Parthasarathy pointed out with reference to Ansons Law of Contract that a contract is discharged (a) by agreement, (b) by performance, (c) by breach, (d) by frustration or (e) by operation of law. He submits that the case of the petitioner, comes under discharged by agreement and not by performance or any other head. On the basis of my finding on the question of fact, the case comes under discharge by breach. Even then, it is contended that owing to discharge of the contract by breach, the contract ceases to subsist. In this context a reference to the decision of the Supreme Court in A. I. R. 1954 S. C. page 2 6 and an examination of its implication becomes relevant. It is pointed out by the learned counsel for the respondent that the Supreme Court has unequivocally repelled the contention that supplies of goods having been made by the contractor, there was no longer any contract for supply of goods in existance but only an obligation arising under the guarantee clause. While repelling the contention, their Lordships of the Suprme Court observe:

"When a contract consists of a number of terms and conditions, each condition does not form a separate contract but is an item in the one contract of which it is a part. The consideration for each condition in a case like this is the consideration for the contract taken as a whole. It is not split up into several considerations apportioned between each term Separately."

Sri B. T. Parthasarathy laid emphasis on the term "for the execution of any works" in Section 9A of the Act. His contention is that after the repudiation of the contract by the petitioner and on its acceptance acceptance by the Public Works Department, there was no contract for execution of any works. This construction was not accepted by the Supreme Court, as indicated by their observations referred to above, and the following observations:

"It was contended, on the strength of certain observations in some English cases, that the moment

a contract is fully executed on one side and all that remains is to receive payment from the other,' then the contract terminates and a new relationship of debtor and creditor takes its place.. With the utmost respect we are unable to agree. There is always a possibility of the liability being disputed before actual payment is made and the vendor may have to bring an action to establish his claim to payment. The existence of the debt depends on the contract and cannot be established without showing that payment was a term of the contract."

It must be noticed that explanation in Section 9A excludes from the purview of Section 9A a contract which has been fully performed by the person by whom it has been entered into with the appropriate Government and in that circumstance the contract is to be deemed not to subsist, by reason of the fact that the Government has not performed its part of the contract either wholly or in part. It must be mentioned that it was fairly conceded by Sri B. T. Parthasarathy that the petitioner's case does not come within the purview of the explanation. The exception to the application of Section 9A of the Act provided in the explanation refers to a case of discharge of contract by performance, *i.e.*, "where the contract is fully performed" by one party. All other cases not covered by the Explanation come within the scope of the disqualification under Section 9A. Sri Parthasarathy also made it clear that excepting the execution of the works under the contracts, the rights and liabilities of the parties were to be determined according to the terms of the contracts. The petitioner's counsel contended that the observations of the Supreme Court relate only to a case of discharge of contract by performance and not by agreement or breach. This cannot be accepted. The observations of the Supreme Court with reference to the existence of the debt that the same depends on the terms of the contract also refer to the existence of rights and obligations arising for determination under the terms and conditions of the contract, discharged under the circumstances other than by performance, *viz.*, (a) by agreement or (b) by breach, (which are relevant to this

case). Therefore, on the reasoning of the Supreme Court, the existence of the rights and obligations between the parties cannot be established without reference to the terms of the contract. Hence, the contract survives for the working out of ancillary matters relating to the rights and liabilities of the parties under the contract. It is pointed out that the explanation to Section 9A was included in the Representation of the People (Amendment) Act, 1966, to avoid the rigour of the Supreme Court decision with regard to persons who had fully performed their part of the contract. It appears to be so.

My attention was also drawn by the learned counsel for the respondent, to the observations of the Supreme Court regarding the purpose of inclusion of Section 7(d) of the Representation of the People Act, as it then was, which now corresponds to Section 9A of the Act, as amended in 1966. The observations of the Supreme Court are:

> "The purpose of the Act is to maintain the purity of the legislatures and to avoid a conflict between duty and interest. It is obvious that the temptation to place interest before duty is just as great when there is likely to be some difficulty in recovering the money from Government (for example, if Government were to choose not to ratify the contracts) as when there is none."

I may also refer in this connection to the observation of the Calcutta High Court in A.I.R. 1950, Cal. page 92, which is as follows:

> "Provisions like Section 7(d) have been a familiar feature of election laws from very early times. They are based on a sound, solemn and salutary principle which democracies or democratic constitutions can ill afford to spare or ignore. Their purpose is to guarantee the purity of the legislature and of the administrative machinery as well and it has been variously put by various eminent judges and noted authorities but always with an eye to the guarantee of purity of the legislature and the administration and to keep the source or the fountain-head of law and the stream of administration unsullied and free from

corruption. The basic standpoint is "to prevent conflict between interest and duty which would otherwise inevitably arise" (per Lindley L. J. in Nutton v. Wilson, (1889) 22 QBD 744 at p.748) and 'to prevent the member concerned from being exposed to temptation or even the semblance of temptation' (per Lords Esher M R. in the same case, (1889) 22 QBD. 744 at p. 747), and that has never been questioned."

Bearing these principles in mind, even though the contract may be repudiated by one party and repudiation is accepted by the other, and there is a discharge of the contract by agreement, or there is a discharge of the contract by breach, by the failure of one of the parties to perform his part of the contract, the mutual claims between the parties required to be determined under the terms of the contract which exists though for ancillary purposes, giving rise to the conflict between interest and duty as visualised in the observations of the Supreme Court and the other decisions which I have quoted above. Therefore, in the circumstances of this case, the contention of the respondent that the disqualification under Section 9A of the Act attaches to the petitioner, even though there may be a determination of the contract between him and the State should be accepted.

For these reasons, my finding on the first issue in the case is that the contractual relationship between the petitioner and the Government was subsisting on 21st January 1967 and the petitioner was disqualified to stand for election under Section 9A of the Act.

In the result, the Election Petition is dismissed. In the circumstances of the case, I direct that the petitioner shall pay the costs of the respondent. Advocate's fee is fixed at Rs. 500.

Sd. K. R. GOPIVALLABHA IYENGAR,
Judge.
1—8—1967

By Order,
K. S. RAJAGOPALAN,
Secretary to the Election Commission, India.